



Order Filed on August 15, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

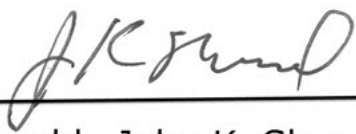
(Jointly Administered)

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

**STIPULATION AND AGREED ORDER
REGARDING UNSECURED CREDITORS' COMMITTEE CHALLENGE PERIOD**

The relief set forth on the following pages, numbered three (3) through six (6), is hereby
ORDERED.

DATED: August 15, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*

Case No. 23-14853 (JKS)

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This Stipulation and Agreed Order (this “Stipulation and Agreed Order”) is entered into between the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and the official committee of unsecured creditors appointed in these chapter 11 cases pursuant to section 1102 of title 11 of the United States Code (the “Bankruptcy Code,” and such committee, the “Committee,” and the Committee together with the Debtors, the “Parties”), who stipulate and agree as follows:

WHEREAS, on June 4, 2023, the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

WHEREAS, on June 21, 2023, the United States Trustee for the District of New Jersey appointed the Committee [Docket No. 133].

WHEREAS, on July 19, 2023, the Court entered an order [Docket No. 297] (the “Final DIP Order”) approving the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 23] on a final basis.

WHEREAS, subject to certain conditions, the Final DIP Order contains certain stipulations, admissions, and waivers (the “Stipulations”) that, pursuant to the Final DIP Order, shall be binding upon all parties in interest, including the Committee, unless and to the extent that a party in interest with the proper standing granted by order of the Court (or other court of competent jurisdiction) has timely and properly filed an adversary proceeding or contested matter

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under the Federal Rules of Bankruptcy Procedure (i) before the earlier of (a) five (5) business days prior to the commencement of a hearing to confirm a chapter 11 plan in these chapter 11 cases and (b) August 20, 2023 (the date set forth in clause (b), the “Outside Date”); (ii) seeking to avoid, object to, or otherwise challenge the findings or Debtors’ Stipulations regarding certain matters described in the Final DIP Order (any such claim, a “Challenge”); and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any timely filed adversary proceeding or contested matter.

WHEREAS, the Final DIP Order further provides that a separate order of the Court conferring standing on the Committee or other party in interest shall be a prerequisite to such party prosecuting a Challenge in these chapter 11 cases.

WHEREAS, following good faith, arm’s-length negotiations, and with the consent of the Required DIP Lenders (as defined in the Final DIP Order) the Parties have agreed that (i) the Debtors, with the consent of the Required DIP Lenders, shall extend the Outside Date with respect to the Committee to August 27, 2023, without prejudice to the Parties’ rights to agree in writing (e-mail being sufficient) to further extensions, and (ii) the Committee shall forbear until August 21, 2023, from filing any motion seeking standing in these chapter 11 cases or otherwise filing a motion in pursuit of a Challenge.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION AND AGREED ORDER, IT IS SO ORDERED as follows:

1. The foregoing recitals are hereby incorporated by reference into this Stipulation and Agreed Order with the same force and effect as if set forth fully hereinafter.

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2. This Stipulation and Agreed Order shall not become effective unless and until it is approved and entered by the Court.

3. The Outside Date, solely with respect to the Committee, is extended to August 27, 2023; *provided*, that the Parties' may agree in writing (e-mail being sufficient) to further extensions of the Outside Date without leave of the Court.

4. The Committee shall not file a motion seeking standing or otherwise file a motion in any way seeking to prosecute a Challenge in these chapter 11 cases prior to August 21, 2023.

5. Other than as set forth herein, the ability of the Committee to file a Challenge remains subject to all limitations and requirements set forth in the Final DIP Order.

6. For the avoidance of doubt, the Outside Date set forth in the Final DIP Order with respect to any party in interest other than the Committee shall not be affected by this Stipulation and Agreed Order.

7. By entering into this Stipulation and Agreed Order, neither Party is waiving or will be deemed to have waived any available claims or defenses, including at law, equity, or otherwise, with respect to any Challenge.

8. The Debtors are authorized to take all actions necessary to effectuate the relief provided by this Stipulation and Agreed Order.

9. Neither this Stipulation and Agreed Order nor any negotiations and writings in connection with this Stipulation and Agreed Order will, in any way, be construed as or deemed to be evidence of or an admission on behalf of any party regarding any claim or right that such party may have against the other party.

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10. Each of the Parties hereto represents and warrants it is duly authorized to enter into and be bound by this Stipulation and Agreed Order.

11. This Stipulation and Agreed Order may be executed in multiple counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which will be deemed an original, but all of which together will constitute one instrument.

12. The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon its entry.

13. The Bankruptcy Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation and Agreed Order.

Dated: August 14, 2023

/s/ Michael D. Sirota

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